UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC.	:	
	:	Case No. 01-CA-263985
versus	:	
	:	
INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS LOCAL R1-999, NAGE / SEIU LOCAL 5000	:	

RESPONDENT'S BRIEF IN SUPPORT OF RESPONDENT'S EXCEPTIONS TO DECISION ISSUED BY ADMINISTRATIVE LAW JUDGE ANDREW GOLLIN

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As the Respondent in the above-captioned case, American Medical Response of Connecticut, Inc. (hereafter, "AMR" or the "Company") hereby submits, by and through the Company's Undersigned Counsel, this Brief in Support of the Company's Exceptions to the Decision (hereafter, the "Decision") issued by Administrative Law Judge Andrew Gollin (hereafter, at times, the "Judge") on March 11, 2021.

BACKGROUND

The Unfair Labor Practice Charge (hereafter, the "Charge") in the case now before the Board was filed on August 3, 2020 by the International Association of EMTs and Paramedics, Local R1-999, NAGE / SEIU Local 5000 (hereafter, the "Union"). See GC Exh. 1(a). On October 15, 2020, the General Counsel, acting through the Acting Regional Director for Region 1 of the National Labor Relations Board, issued a Complaint (hereafter, the "Complaint") by which he adopted the allegations encompassed by the Charge. See GC Exh. 1(c). Put simply, the Complaint alleges that AMR violated Section 8(a)(5), and derivatively, Section 8(a)(1) of the National Labor Relations Act, as amended (hereafter, the "Act"), on account of the Company's alleged failure or refusal to provide the Union with information and documentation that was requested by the Union on various dates between May and July of 2020. Id., ¶¶ 9 – 13.

In response to the Complaint, on October 29, 2020, AMR filed a timely Answer through which the Company denied the material allegations of the Complaint. See GC Exh. 1(e). AMR later filed an Amended Answer, whereby the Company averred a number of Affirmative Defenses. See GC Exh. 1(f). On January 19, 2021, a hearing convened *via* Zoom before Administrative Law Judge Andrew Gollin. The hearing continued on January 20 and January 26, 2021. The parties submitted their post-hearing briefs to the Judge on March 10, 2021, and the next day, the Judge issued the Decision, where he concluded the Company violated the Act substantially in the ways alleged by the General Counsel. See Decision, page 1.

STATEMENT OF THE CASE

1.) Background

AMR is the leading provider of medical transportation services in the State of Connecticut. The Company has four (4) Divisions, namely Bridgeport, Hartford, New Haven and Waterbury. See Decision, page 3. The Bridgeport and New Haven Divisions are managed by William Schietinger, the Company's Regional Director for Connecticut South, who assumed the position in roughly August of 2019. Id.

The majority of the Company's workforce is comprised of Emergency Medical Technicians (hereafter, "EMTs") and Paramedics. The EMTs and

Paramedics assigned to the New Haven Division are represented by the Union. The terms and conditions of employment for these employees (hereafter, at times, the "represented employees") are set forth by a Collective Bargaining Agreement (hereafter, the "Agreement") that took effect on January 1, 2019 and is scheduled to expire on December 31, 2021. See GC Exh. 1. Nate Smith is the Union's assigned representative for the EMTs and Paramedics working out of the Company's New Haven Division, and for roughly the last six years, EMT Michael Montanaro has served as the Union's President. See Decision, page 3.

2.) The 2019 Grievance

On or about October 14, 2019, the Union filed a Grievance (hereafter, at times, the "2019 Grievance") against the Company. See GC Exh. 3, Tr. 43 – 44 (Smith). The Grievance was prompted by an increase in the number of employees from the Bridgeport Division (hereafter, the "Bridgeport employees" or the "Bridgeport crews") performing work in the locales serviced by the New Haven Division (hereafter, for ease of reference, "New Haven"). See Tr. 175 (Montanaro). The Grievance styled the Company's use of Bridgeport crews to perform New Haven work as a form of "subcontracting" that allegedly violated Article 4.02 of the Agreement. See GC Exh. 3. Schietinger believed the Grievance was based upon the Union's assumption that the Company was prescheduling Bridgeport employees for work in New Haven. See Tr. 331 – 332.

The Grievance was processed by the Company, and ultimately, the parties convened a meeting to discuss the Union's allegations. For the Company, the meeting was attended by Schietinger together with Tim Craven, the Company's Operations Manager for New Haven. For the Union, the meeting was attended by Smith and Montanaro as well as the Union's attorney, Doug Hall. See Decision, pages 4 – 5. The parties concluded the meeting with a resolution of the Grievance whereby the parties agreed that the Company could assign Bridgeport employees to perform New Haven work when necessary for so-called "mutual aid."[1] Id., page 5.

3.) AMR's "Disaster" Notice of March 16, 2020

On March 16, 2020, as the presence and grim effect of COVID-19 became clear to the world, AMR provided the Union with written notice of the Company's invocation of Article 23.03 of the Agreement (see GC Exh. 1, page 45), which addresses – and substantially expands – the Company's rights in circumstances where normal operations are disrupted by an event outside of the Company's control. See R. Exh. 4, pages 8 – 9; see also Tr. 248 – 250 (Nupp), Tr. 298 – 299 (Schietinger). The notice observed that, by virtue of Article 23.03, the Company

[1] "Mutual aid" refers to a set of circumstances in which the emergency response needs for a given locale exceed the emergency response resources possessed by the locale and the further resources necessary to meet these higher needs originate from an outside source. See Tr. 49 (Smith).

"would be temporarily relieved of obligations under the [Agreement] relating to certain matters including scheduling and shifts changes." See R. Exh. 4, page 8. The notice also observed that AMR would now be authorized "to modify work schedules, work times and other daily working conditions . . ." Id., page 9. The Union acknowledge receipt of the notice and the record does not include any evidence that the Union expressed any disagreement with AMR's statement of its rights under Article 23.03. See generally R. Exh. 4.

4.) Late April / Early May 2020 Interactions Between Montanaro and Schietinger

In late April 2020, Montanaro observed an increase in the number of Bridgeport crews appearing in New Haven. See Decision, page 5. Montanaro also recalled hearing "radio chatter" in which Bridgeport crews essentially communicated that they were performing work, or would be performing work, in New Haven. Id. Around the same period of time, according to Montanaro, represented employees began to complain to him about so-called "brown outs."[2] Id.

On May 2, 2020, Montanaro sent an e-mail to Schietinger. See GC Exh. 7, see also Tr. 55 – 56 (Smith), 188 – 189 (Montanaro). In the e-mail, Montanaro

[2] "Brown out" refers to the removal of works hours, typically an entire shift, from the work schedule. See Tr. 54 (Smith), Tr. 171 (Montanaro), Tr. 339 – 341 (Schietinger).

essentially requested that seniority govern the removal of represented employees from the schedule. Montanaro also contended that the schedule changes had resulted in "holdovers."[3] Though a Saturday, Schietinger immediately responded to Montanaro's e-mail. See GC Exh. 7. In doing so, Schietinger explained the Company would soon be restoring hours to the schedule and offered to meet with the Union as soon as Monday to discuss any ideas the Union wished to offer. Id.

On May 4, 2020, Montanaro sent another e-mail to Schietinger. See GC Exh. 8, see also Tr. 60 (Smith), Tr. 191 (Montanaro). In the e-mail, Montanaro stated he observed a number of employees removed from the schedule and heard dispatchers assigning Bridgeport employees to New Haven "to assist with the over abundance of calls that New Haven [was] facing." Schietinger immediately investigated Montanaro's concerns (see Tr. 291 – 292), and only thirty minutes later, advised that between thirty to forty hours would be returned to the schedule each day that week. As for Bridgeport employees working in New Haven, Schietinger confirmed there was a single Bridgeport crew in New Haven that day. However, the Company had not scheduled the crew for work in New Haven. See Tr. 292 – 293 (Schietinger). Instead, as explained by Schietinger's response, the Bridgeport employees were in New Haven to drop off a patient and, due to a spike

[3] "Holdover" refers to occasions on which employees are required to work beyond the scheduled end of their workday. See Tr. 339 (Schietinger).

in volume that was taking place at the time, the Company asked the same employees to pick up a patient at the same facility. See GC Exh. 8.[4]

According to Montanaro, on or about May 6, 2020, he and Schietinger had a conversation in Schietinger's office. See Tr. 192 – 193 (Montanaro). Montanaro stated, "I heard there was about 1,000 hours cut off the schedule" and requested an explanation. Schietinger obliged, explaining the Company's volumes had been affected by the virus outbreak. See Decision, page 6. Montanaro then stated that holdovers were taking place. In response, Schietinger stated he would undertake best efforts for employees to be relieved of duty at the scheduled end of their shifts. Id. Lastly, Montanaro raised Bridgeport crews being located in New Haven, whereupon, here as well, Schietinger stated he would undertake best efforts not to preschedule Bridgeport employees for New Haven work. Id.

Following the meeting with Schietinger, Montanaro "contacted [Smith] to let him know that [he] spoke to [Schietinger] about everything. [He] explained to [Smith] what happened and [Smith] kind of took it from there." See Tr. 194 – 195 (Montanaro). The record does not include any evidence as to why Montanaro

[4] Contrary to the Judge's findings, Schietinger's e-mail to Montanaro of May 4, 2020 does not state that he assigned a Bridgeport crew to drop off a patient in New Haven "because there had been a 'spike in call volume.'" See Decision, pages 6, 13. In fact, Schietinger stated a Bridgeport crew was in New Haven to drop off a patient and, because of a volume spike in New Haven at the time, the crew picked up a patient who was at the same hospital. See GC Exh. 8.

contacted Smith or what action, if any, Montanaro was seeking Smith to pursue on behalf of the represented employees.

5.) Early May 2020 Phone Call Between Smith and Schietinger

On or about May 6, 2020, Smith contacted Schietinger by phone. See Tr. 63, 66 (Smith). Smith informed Schietinger of represented employees' reports that brown outs were not being determined on the basis of seniority, which Schietinger confirmed to be accurate. See Decision, page 6. Smith then informed Schietinger of represented employees' concerns as to Bridgeport employees performing New Haven work. In response, Schietinger stated that Bridgeport employees were performing New Haven work only to the extent necessary for mutual aid. The phone call came to an end with Smith advising that the Union would send an information request to the Company. Id.

6.) The Union's May 7, 2020 Information Request

On May 7, 2020, *via* a letter signed by Smith and addressed to Schietinger, the Union submitted an information request to the Company (hereafter, at times, the "May request"). GC Exh. 9, see also Tr. 67 (Smith). Smith's letter stated the information request was submitted due to the Union's "concerns" related to a reduction in represented employees' shifts, but he did not mention any Article of the Agreement that was implicated as part of these concerns. In relevant part, the Union requested the following information / documentation:

Paragraph (1): List of all bargaining unit members who have been removed from the schedule since March 1, 2020.

Paragraph (2): List of all shifts removed from the schedule since March 1, 2020.

Paragraph (3): Data of call volume since March 1, 2020.

Paragraph (4): Number of calls responded to by non AMR New Haven bargaining unit members in the New Haven coverage area since March 1, 2020.

On May 18, 2020, Smith sent an e-mail to Schietinger in which he noted the Union had not yet received a response to the May request. GC Exh. 10, see also Tr. 67 – 68 (Smith). The very next day, Schietinger informed Smith that the Company's Labor Relations Manager, Aaron Nupp, would be responding on the Company's behalf and invited Smith to contact him (*i.e.*, Schietinger) with any questions. GC Exh. 11, see also Tr. 68 – 69 (Smith).

A day or two later, Smith received a phone call from Nupp. See Tr. 73 (Smith). Nupp testified the purpose of the call was to seek clarification with respect to Paragraph (2) of the May request, *i.e.*, the list of all shifts removed from the schedule. See Tr. 243 – 244 (Nupp). In terms of the substance of the conversation, Nupp informed Smith of the fact the documents responsive to Paragraph (2) were voluminous and Smith agreed to accept only those documents that showed the brown outs. See Decision, page 7.

7.) The Company's June 7, 2020 Response

On June 7, 2020, *via* a letter signed by Nupp and addressed to Smith, the Company responded to the May request (hereafter, at times, the "June response"). See GC Exh. 12, Tr. 78 (Smith). In relevant part, the Company raised the following objections to the following Paragraphs:

> Paragraph (1): **List of all bargaining unit members who have been removed from [*sic*] March 1, 2020.** The Employer objects to the Union's request as it is overly broad. Should the Union wish to revise its request to indicate the specific reason(s) the employee(s) had hours reduced or removed from the schedule, the Employer may consider the revised request.
>
> Paragraph (3): **Data of call volume since March 1, 2020.** The Employer objects to the Union's request as it is overly broad, lack a basis of relevance, and is proprietary in nature and is outside the Union's jurisdiction and the collective bargaining relationship.
>
> Paragraph (4): **Number of calls responded to by non-AMR New Haven bargaining unit members in the New Haven coverage area since March 1, 2020.** The Employer objects to the Union's request as any information pertaining to non-bargaining unit employees is outside the Union's jurisdiction and the collective bargaining relationship.

The Company's response was accompanied by the brown out schedules that Smith and Nupp had discussed in connection with Paragraph (2) of the May request. See GC Exh. 12(a) – 12(c), Tr. 78 – 79 (Smith), Tr. 259 (Nupp). Though

Smith informed Schietinger during their above-referenced phone call that the Union would share the Company's responses with represented employees, Smith had no recollection of sharing the brown out schedules with any of the employees, including but not limited to Montanaro. See Tr. 124 (Smith).

8.) The Union's June 10, 2020 Information Request

On June 10, 2020, *via* a letter signed by Smith and addressed to Nupp, the Union submitted to the Company what Smith described as a "clarified" information request (hereafter, at times, the "June 10 request"). See GC Exh. 13, see also Tr. 83 (Smith). In connection with Paragraphs (1), (3) and (4) of the May request, Smith made the following statements:

> Paragraph (1): **List of bargaining unit members who have been removed from the schedule from March 1, 2020.** I am asking for the list the Company used, by seniority of the members who were impacted by the "brown outs" as per CBA, Article 9, Section 9.03.
>
> Paragraph (3): **Data of call volume since March 1, 2020.** The information is relevant to the ongoing union investigation into non-bargaining unit AMR employees performing bargaining unit work in the New Haven coverage area on a frequent basis during the brown outs.
>
> Paragraph (4): **Number of calls responded to by non-AMR New Have Bargaining Unit members in the New Haven AMR coverage area since March 1, 2020.** See number 3.

Smith's testimony was that Paragraph (1) of the June 10 request and Paragraph (1) of the May request targeted the very same information. See Tr. 136 – 137. Nupp, on the other hand, testified that he understood Paragraph (1) of the June 10 request and Paragraph (1) of the May request to be seeking different information. See Tr. 245 – 247.[5]

As part of the June 10 request, Smith also expressed an intention to contact Schietinger, as Nupp had previously invited (see GC Exh. 12, Paragraph 5), for a further discussion related to the brown outs. However, the record does not include any evidence that Smith took advantage of the opportunity and actually contacted Schietinger. See Decision, page 8, fn. 14.

9.) The Union's June 15, 2020 Information Request

On June 15, 2020, *via* a letter signed by Smith and addressed to Schietinger, the Union submitted a new information request to the Company (hereafter, at times, the "June 15 request"). See GC Exh. 14, see also Tr. 83 – 84 (Smith). Smith's letter stated the June 15 request was submitted "[a]s the [Union] continue[d] to look into concerns over staffing and the brown outs."

In relevant part, the Union requested the following documentation:

> Paragraph (2): Documentation detailing the AMR New Haven response times for the period of May 1, 2020 through todays date.

[5] The Judge did not make any finding in terms of whether these Paragraphs set forth the same request or different requests.

The June 15 request did not include any explanation as to why Smith believed the responses times would be of any value to the Union. However, during his testimony before the Judge, Smith claimed the Union requested the response times in order to determine the represented employees' compliance with these times as well as the location of the Bridgeport crews. See Decision, page 9.

10.) The 2020 Grievance

On July 8, 2020, the Union filed a Grievance (hereafter, at times, the "2020 Grievance") against the Company. See GC Exh. 16, Tr. 85 – 86 (Smith). Though the allegation was not phrased in precisely the same way, according to the testimony offered by both Smith and Montanaro, the violation alleged by the 2020 Grievance was essentially the very same allegation previously alleged by the 2019 Grievance. See Tr. 121, 145 – 146 (Smith), Tr. 209 (Montanaro). The Grievance was denied by the Company at each step of the grievance process and ultimately advanced to arbitration by the Union. See GC Exhs. 17, 19, 22, 23, 25, see also Tr. 86, 88 – 89, 92 – 94 (Smith).[6]

[6] In the Decision, the Judge appears to find, or at least imply, that the Union pursued one grievance on July 8, 2020 and another, separate grievance on July 16, 2020 (see Decision, page 9), which is not accurate. In fact, the Union pursued only one grievance, which was filed on July 8, 2020, and then elevated by the Union to Step Two of the parties' grievance system on July 16, 2020. See GC Exhs. 16 and 19.

11.) The Company's July 17, 2020 Response

On July 17, 2020, *via* a letter signed by Nupp and addressed to Smith, the Company responded to the pending information requests (hereafter, at times, the "July 17 response"). See GC Exh. 20. In relevant part, the Company offered the following responses and objections to the following Paragraphs:

> Paragraph (1): **List of all bargaining unit members who have been removed from [*sic*] March 1, 2020. I am asking for the list the Company used, by seniority of the members who were impacted by the "brown outs" as per CBA, Article 9, Section 9.03.** The Employer has no responsive information regarding a seniority list for "brown outs." Hours reduced or removed from the schedule were based on the Employers determination of need and its rights as defined in Article 4, Section 4.01 of the [Agreement]. Additionally, the Union was provided notice on 3/16/20 that the Employer was temporarily invoking the local and national disaster provisions of the [Agreement] due to the COVID 19 Crisis which temporarily relieves the Employer of obligations under the [Agreement] relating to certain matters including scheduling and shift changes.
>
> Paragraph (2): **Data of call volume since March 1, 2020. The information is relevant to the ongoing union investigation into non-bargaining unit AMR employees performing bargaining unit work in New Haven coverage ara [*sic*] on a frequent basis during continued brown outs.** The Employer renews its objection to the Union's request as it is overly broad, lacks a basis of relevance, and is proprietary in nature and is outside the Union's jurisdiction and the collective bargaining relationship.

Paragraph (3): **Number of calls responded to by non-AMR New Haven bargaining unit members in the New Haven AMR coverage area since March 1, 2020. See number 3.** The Employer renews its objection to the Union's request as it has a right to allocate and / or reallocate Company resources and to " . . . take such measures as it may determine to be necessary for an orderly operation of the business." Additionally, any information pertaining to non-bargaining unit AMR employees is outside the Union's jurisdiction and the collective bargaining relationship.

Paragraph (5): **Documentation detailing the AMR New Haven response times for the period of May 1, 2020 through June 15, 2020.** The Employer objects to the Union's request as it is overly broad, lack a basis of relevance, and is outside the Union's jurisdiction and the collective bargaining relationship.

In connection with Paragraph (1) of the July 17 response, Smith interpreted Nupp's statement as an indication that the responsive information existed but the Company was refusing to provide the information. See Tr. 139 – 140. In fact, Nupp intended to convey (and did convey) that the Company did not possess the requested information. See Tr. 247 – 248 (Nupp).

12.) The Union's July 22, 2020 Information Request

On July 22, 2020, *via* a letter signed by Smith and addressed to Nupp, the Union submitted yet another information request to the Company (hereafter, at times, the "July 22 request"). See GC Exh. 21, Tr. 91 (Smith). Smith explained he viewed the July 22 request as a new request, because, whereas the previous

requests were related to "concerns," the July 22 request was the result of the 2020 Grievance. See Tr. 91. In relevant part, the Union requested the following information and documentation:

Paragraph (1):	List of employees affected by the "brown out" since March 1, 2020
Paragraph (2):	Data of AMR New Haven call volume since March 1, 2020
Paragraph (3):	Number of calls responded to in the New Haven service area by non-bargaining unit employees.
Paragraph (4):	AMR New Haven's response time policy / procedure / standard operating guidelines.
Paragraph (5):	Detailed log of response times for AMR New Haven for a time period of May 1, 2020 through present.

In terms of Paragraph (1), Smith testified that, though worded differently, the Paragraph sought the very same information as Paragraph 1 from the May request and Paragraph 1 from the June 10 request. See Tr. 148 – 149. Nupp, by contrast, testified that he understood Paragraph (1) of the July 22 request to be a new request. See Tr. 252 – 253.[7]

[7] Here as well, the Judge did not make any finding in terms of whether these Paragraphs set forth the same request or different requests. See fn. 5, *supra*.

13.) The Company's July 29, 2020 Response

On July 29, 2020, *via* a letter signed by Nupp and addressed to Smith, the Company responded to the July 22 request (hereafter, at times, the "July 29 response"). See GC Exh. 24, Tr. 93 (Smith). Specifically, in relevant part, the Company offered the following responses and objections:

> Paragraph (1): **List of all employees affected by the "brown out" since March 1, 2020.** The Employer objects to the Union's request as it is overly broad and subjective in nature.
>
> Paragraph (2): **Data of AMR New Haven call volume since March 1, 2020.** The Employer has already provided a response to this request in its letters dated 6/7/2020, and 7/17/2020.
>
> Paragraph (3): **Number of calls responded to in the New Haven service area by non-bargaining unit employees.** The Employer has already provided a response to the same or similar request in its letter dated 7/17/2020.
>
> Paragraph (5): **Detailed log of response times for AMR New Haven for a time period of May 1, 2020 through present.** The Employer has already provided a response to the same or similar request in its letter dated 7/17/2020.

A few days after receipt of the Company's July 29 response, specifically, on August 3, 2020, the Union filed the Charge and the litigation now before the Board ensued. See Tr. 149 – 150 (Smith).

QUESTIONS PRESENTED

1.) Whether the Company had a fair hearing (see Exception Nos. 1 – 46);

2.) Whether the Judge properly and correctly determined that the Union was entitled to a list of represented employees removed from the schedule since March 1, 2020 (see Exception Nos. 1 – 3, 5 – 9, 13 – 15, 17 – 34, 37 – 40, 43 – 46);

3.) Whether the Judge properly and correctly determined that the Union was entitled to a list of represented employees affected by the brown out since March 1, 2020 (see Exception Nos. 1 – 9, 13 – 15, 17 – 34, 37 – 40, 43 – 46);

4.) Whether the Judge properly and correctly determined that the Union was entitled to New Haven call volume since March 1, 2020 (see Exception Nos. 1 – 3, 5 – 9, 13 – 15, 17 – 26, 28 – 33, 35, 37 – 40, 42 – 46);

5.) Whether the Judge properly and correctly determined that the Union was entitled to the amount of New Haven work performed by Bridgeport crews since March 1, 2020 (see Exception Nos. 1 – 3, 5 – 9, 13 – 15, 17 – 26, 28 – 33, 35, 37 – 39, 43 – 46);

6.) Whether the Judge properly and correctly determined that the Union was entitled to New Haven response times for the period May 1, 2020 to June 15, 2020 (see Exception Nos. 1 – 3, 5 – 9, 13 – 15, 17 – 26, 28 – 33, 36, 37 – 39, 43 – 46); and

7.) Whether the Judge properly and correctly rejected the Company's defense that the Union waived any entitlement to any of the requested information (see Exception Nos. 1 – 3, 5 – 9, 13 – 26, 28 – 33, 37 – 39, 43 – 46).

ARGUMENT

Nothing could be more fundamental to a Board proceeding than the right to a fair hearing. Unfortunately, in the case here, AMR never had a fair hearing. Less than twenty-four hours after the submission of the parties' (very lengthy) post-hearing briefs, the Judge issued the Decision, and in the fervor and haste of getting the Decision out as quickly as possible, the Judge engaged in a comedy of errors.

The large majority of AMR's defenses were ignored by the Judge. That is, the Decision simply does not address these defenses, let alone provide a reasoned analysis for why they did not carry the day. As for the relatively few defenses the Judge did consider, in nearly every case, the Judge ignored key admissions from the General Counsel's own witnesses and rejected the defenses based upon arguments and legal authority that were never raised by the General Counsel or the Union.

Similarly, the Judge effectively acted as a surrogate advocate for the Union, as he put together various *post hoc* explanations as to why, supposedly, the requested information was necessary for the Union's representation of the

employees. The General Counsel was also an undue beneficiary of the Decision, as the Judge ignored key evidentiary voids in the General Counsel's *prima facie* case.

Though the Company does not believe the Judge deliberately favored one party or the other, the fact remains that the Judge's analysis of the General Counsel's allegations and AMR's defenses was anything but evenhanded. Accordingly, the Company urges the Board to dismiss the entirety of the Complaint.

1.) The May Request for Represented Employees Removed from the Schedule

The Judge found the Union's request to be presumptively relevant and also determined that, separate and apart from the presumption, the Union proved the relevance of the request by virtue of Smith's statements to Schietinger and Nupp. See Decision, page 13. The Company, however, never questioned the relevance of the request. Instead, as demonstrated by the June response, the Company objected on the grounds the request was overly broad (see GC Exh. 12), and when questioned about the objection during the hearing before the Judge, Smith admitted the validity of the objection. See Tr. 130 – 131. Shockingly, the Decision makes no reference to Smith's admission, even though the admission was predictably highlighted by the Company's post-hearing brief to the Judge. See page 28.

The Judge not only ignored the admission that proved the validity of the Company's defense, the Judge completely mischaracterized AMR's defense. According to the Judge, AMR claimed the request was overly broad and provided the Union with only the information the Company divined to be relevant, namely, the schedules that were produced with the June response. See Decision, page 14. The Company never informed the Union of any proclamation that these schedules were the only documents of any relevance. In fact, in response to Paragraph (1) of the May request, AMR did not even refer to these schedules. See GC Exh. 12, Paragraph (1).

In reality, though the Company did (correctly) object on the grounds the request was overly broad, the Company also invited the Union to narrow the request to cover only those employees removed from the schedule for a reason that had some relationship with the Union's concerns. Id.[8] For whatever the reason, the Union later presented the Company with an entirely different request, which was a request for the seniority lists that the Company used to effectuate the brown outs. See GC Exh. 13. In response, AMR advised that no responsive documents

[8] By way of example, as phrased, Paragraph (1) of the May request extended to employees who were voluntarily removed from the schedule (*e.g.*, a personal day), which clearly had no relationship with the concerns that the Union expressed in the May request.

were in existence, as employees were not removed from the schedule on the basis of their seniority. See GC Exh. 20.

In summary, AMR's overly broad objection hardly conveyed any "kick rocks" message to the Union. To the contrary, the Company expressed a willingness to respond to a revised request, and when the Union later presented the Company with an entirely different request, the Company provided the Union with the due and accurate response. None of these facts, however, appear in the Decision, much less played any role in the Judge's analysis of the Company's defense.

2.) The July 22 Request for Employees Affected By the Brown Out

As explained by the Company's post-hearing brief to the Judge (see page 30), the Union's request was overly broad based on the fact the request extended to all ***"employees."*** See GC Exh. 21 (emphasis added). Notably, the Company had good reason to believe that the Union's use of the term "employees" encompassed both represented and unrepresented employees, as many of the Union's previous requests were confined specifically to ***"bargaining unit members."*** See *e.g.*, GC Exh. 9, Paragraph 1 (emphasis added). The Company's reference to previous statements by the Union follows the Judge's view that, "[a]s with all communications, [ ] statements are more fully understood when viewed in light of the surrounding circumstances." See Decision, page 12, fn. 19. Unfortunately,

however, the Judge simply failed to address AMR's defense, even though, as noted above, the defense was specifically presented to the Judge as part of the Company's post-hearing brief.[9]

The Judge did address the Company's other defense, namely the subjectivity associated with the phrase "affected by," but only by relying upon a defective analysis. The Judge believed the meaning of the phrase was clear "in light of Smith's earlier statements about what the Union was attempting to determine." See Decision, page 13.[10] Lost on the Judge, however, was the fact the Union described the July 22 request as a ***"new"*** request (see Tr. 91), and expressly linked all of the requests with the processing of the 2020 Grievance. See GC Exh. 21. By its own terms, the 2020 Grievance was based upon events that (allegedly) occurred

[9] In fact, the Judge effectively deprived the Company of even an opportunity to litigate the defense, insofar as the Judge (re)phrased the Union's request as follows: "[t]he list(s) of ***unit employees*** removed from the schedule / affected by the brown outs . . ." See Decision, page 13 (emphasis added). Of course, the Union's actual request was for a "[l]ist of ***employees*** affected by the 'brown out' since March 1, 2020." See GC Exh. 21.

[10] In terms of statements related to any open or concrete questions, the Judge's findings refer only to the Union's efforts to determine whether the Company removed represented employees from the schedule on the basis of seniority. See Decision, page 13. As of July 22, however, the Company would have lacked any reason to believe that any uncertainty remained in terms of the role that seniority played in schedule determinations. Based on the Judge's own findings, on or about May 6, 2020, Schietinger specifically informed Smith that seniority had not governed the removal of employees from the schedule, and the record does not include any evidence that seniority was mentioned during the course of any of the parties' subsequent e-mails, phone calls or meetings. Id., pages 6, 13.

on July 7 and 8, 2020. Accordingly, the notion that statements that Smith made months before about events that were yet to take place somehow shed light on the phrase "affected by" is, obviously, absurd.

3.) The May Request for Call Volume and The July 22 Revised Request for New Haven Call Volume

The Judge believed the Union proved the relevance of all of the information requests based upon the Union's statements to the Company. See Decision, page 12. In the case of the Union's request for AMR's call volume, the Judge's analysis reviews only two statements from the Union to the Company, one of which was communicated *via* the June 10 request and the other of which was communicated *via* the July 22 request. Id., page 13.

In the June 10 request, Smith offered only a conclusory declaration of relevance for the call volume:

> The information is relevant to the ongoing union investigation into non-bargaining unit AMR employees performing bargaining unit work in the New Haven coverage area on a frequent basis during the brown outs.
>
> See GC Exh. 13.

The Judge believed the above-quoted statement demonstrated AMR's call volume was relevant to the Union's "investigation and pursuit of grievances over potential violation(s) of the parties' Agreement." See Decision, 12. Significantly, however, the record is barren of any evidence that, in fact, the Union was assessing

the viability of a grievance in May or June 2020. To the contrary, in connection with their phone call on May 6, 2020, the Judge found that "Smith concluded by informing Schietinger that he would be requesting information to understand and communicate to unit members what was happening." Id., page 6. In other words, Smith did not refer to the possibility of a grievance or contend that any of the actions described by Schietinger, such as employees being removed from the schedule regardless of seniority, gave him reason to believe the Company might be in violation of the Agreement. Similarly, the Union's opening information request of May 7, 2020 made no reference to any potential grievances, but rather, referred only to ***"concerns."*** That, under the Board's law, simply doesn't cut the mustard. See Disneyland Park, 350 NLRB at 1259 (for information that is not presumptively relevant, "the union must claim that a specific provision of the contract is being breached and must set forth at least some facts to support that claim"). Moreover, even if the Company was somehow supposed to realize that the Union was investigating a potential grievance, Smith did not offer any explanation as to ***why*** the call volume would be necessary for the Union's investigation. See Disneyland Park, 350 NLRB at 1258, fn. 5 (a "generalized, conclusory explanation is insufficient to trigger an obligation to supply information"); see also Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979), *infra*.

As part of his testimony before the Judge, Smith expressly confirmed that June 10, 2020 was the only occasion on which he provided the Company with an explanation of the relevance for the call volume:

> *Q:* And, sir, am I right in saying that [G.C. Exh. 13] is the only occasion when the Union presented the company with an explanation of relevance with respect to the call volume.
>
> *A:* This is the only time I have given the company the relevance.
>
> See Tr. 137 – 138.

In spite of Smith's express testimony, the Judge concluded that the Union also demonstrated the relevance of the call volume when, on July 22, 2020, Smith made the bare assertion that the information was needed to process the 2020 Grievance. See Decision, page 13. The Judge reached the conclusion not only in the face of Smith's testimony, but also in spite of the fact the record includes ***no*** evidence of what, precisely, occurred on July 7 and 8, 2020 and gave rise to the grievance.

If anything, the record suggests AMR's call volume was completely irrelevant to any dispute between the parties. In April and early May 2020, when call volume was down (see GC Exh. 7), the Union's objection was centered on Bridgeport crews' performance of New Haven work. In late May 2020, when call volume began to rebound (see R Exh. 6), the focus of the Union's objection remained the same, i.e., Bridgeport crews performing New Haven work. In other

words, regardless of the volume of work, the Union's position had always been the work should be performed by any New Haven employees available for the work. See Decision, page 5 (during the parties' meeting on the 2019 Grievance, "Montanaro explained that the Union wanted the Bridgeport crews to stop handling the New Haven unit work"). Indeed, during his testimony before the Judge, Montanaro expressly confirmed that the 2020 Grievance did not include any contention that the Company violated the Agreement by virtue of any changes in staffing levels that took place due to changes in the Company's volume. See Tr. 213.

The Judge also improperly rejected the Company's defenses, such as the fact the Union's request was overly broad. As confirmed by Smith, at the time the May request was submitted, the Union knew the Company had a number of different divisions, each located in a different city, but New Haven was the only location of any interest to the Union. See Tr. 131. Nevertheless, as phrased by the May request, the Union generally sought "[d]ata of call volume." See GC Exh. 12. Given the fact the letter was addressed to Schietinger, who was also responsible for the Bridgeport division (see Decision, page 3), and Smith alluded to unrepresented employees elsewhere in the letter (see GC Exh. 12, Paragraph 4), the Company had more than a reasonable basis to object on the grounds the Union's request was overly broad. Moreover, contrary to the Judge's determination (see Decision, page

13, fn. 20), Smith did not clearly specify the Union was looking for New Haven as part of the June 10 request. There, Smith made no reference to New Haven in the request itself, but rather, only alluded to New Haven in the context of the Union's supposed "explanation" of relevance. At the end of the day, the inescapable fact of the matter is that the Union's request was not narrowed before the July 22 request, where, at long last, the Union finally narrowed the request for only ***"AMR New Haven"*** call volume. See GC Exh. 21 (emphasis added).

In addition, the Judge used an improper analysis to reject the Company's position that the call volume was proprietary. The Judge concluded the Company could not rely on any "blanket claim" the call volume was proprietary, but rather, the Company was under a legal duty to explain why the call volume was proprietary when the Company raised the objection. See Decision, page 15.[11] In support of the conclusion, the Judge cited to Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979), where the Court did address a "bare assertion" that was made by one of the parties. Contrary to how the Judge portrayed the case, however, the assertion did not come from the employer in connection with a concern the requested information was proprietary. Instead, the Court was troubled by "[a]

[11] As elsewhere, the Judge's analysis was one of his own making. That is, neither the General Counsel nor the Union argued the Company's defense should be rejected on the grounds the Company did not explain the basis for the defense at the time the defense was raised by the Company.

union's bare assertion that it needs information to process a grievance," which "does not automatically obligate the employer to supply all the information in the manner requested." 440 U.S. at 314. In Detroit Newspaper Agency, the only other case cited by the Judge, the Board did express disfavor in connection with blanket claims of confidentiality. 317 NLRB 1071, 1072 (1995). Nowhere in Detroit Newspaper Agency, however, did the Board hold that an employer is under a duty to elaborate upon a confidentiality defense at the time the defense is raised by the employer.

The Judge's finding that the Company only offered a "conclusory" explanation for the proprietary nature of the call volume is even less defensible. See Decision, page 15. As someone with a lengthy career in the EMS industry and a deep knowledge of its workings (see Tr. 307), Schietinger explained how call volume could advantage a competitor as well as the steps the Company took to preserve the confidentiality of the information. The General Counsel did not offer any evidence in rebuttal of Schietinger's testimony.[12] Moreover, the Judge's expectation of a detailed explanation as to why the call volume is proprietary strikes a very stark, if troubling contrast with the Judge's complete lack of

[12] Also worthy of note, the record includes no evidence that the Union expressed any disagreement to the Company in terms of the proprietary nature of the call volume or requested that the Company explain why the call volume was proprietary in nature.

expectation in terms of any detailed explanation as to why the information requested by the Union is relevant.

Lastly, to the extent the Judge believed the Company was under a duty to offer to bargain with the Union over an accommodation (see Decision, page 15), the Judge should have ordered the Company to do so, as opposed to compelling the Company to disclose the call volume in the absence of any protection. See Metropolitan Edison Company, 330 NLRB 107, 109 (1999). Once more, AMR specifically raised these issues with the Judge (see AMR post-hearing brief, page 37, fn. 7), but they were ignored by the Judge.

4.) The May Request for the Amount of New Haven Work Performed by Bridgeport Crews

The Judge analyzed the relevance of the amount of New Haven work performed by Bridgeport crews side-by-side with the relevance of the Company's call volume. See Decision, page 13. Here as well, therefore, the Judge's finding of relevance is based upon the very same statements from June 10, 2020 and July 22, 2020. As explained above, Smith's June 10, 2020 "explanation" of relevance is, in fact, only a conclusory declaration of relevance. Furthermore, during May and June 2020, the Union made no mention of, and gave AMR no reason to believe any consideration was being given to, potential grievances. Likewise, any statements that were made by Smith on July 22, 2020 are empty of any probative

value, as the statements are intertwined with a grievance that arises from events that have no existence in the record now before the Board.[13]

The Judge also completely ignored the Company's explanation as to why the amount of New Haven work performed by Bridgeport crews would play no role in any dispute between the parties. See AMR's post-hearing brief, page 43. Bridgeport crews' performance of New Haven work in 2020 was hardly atypical. Indeed, as demonstrated by Schietinger's unrebutted testimony, Bridgeport employees routinely performed work in New Haven. See Tr. 290 – 291. Not surprisingly, therefore, the 2019 Grievance was not resolved based upon any agreement that Bridgeport crews would steer clear of New Haven altogether. Instead, the 2019 Grievance was resolved based upon the agreement that Bridgeport crews would perform work in New Haven only when necessary for "mutual aid." See Decision, page 5. That being the case, while the Union might have a legitimate need to investigate ***why*** a Bridgeport crew was performing New Haven work, the Union would not have any self-explanatory need to investigate the ***number*** of Bridgeport crews performing New Haven work.

Finally, the Judge ignored the Company's contention that none of the information that was requested by the Union was truly necessary, including the

[13] More generally, the General Counsel did not offer any evidence as to how, or whether, AMR used Bridgeport employees to perform New Haven work during the period of late May to late July 2020.

amount of New Haven work performed by the Bridgeport employees, because the Union was able to investigate, file, process and resolve the 2019 Grievance in the absence of any of the requested information. See Company Post-Hearing Brief, page 42 - 43. Notably, Smith and Montanaro agreed that the 2019 Grievance and the 2020 Grievance set forth substantially the same allegation (see Tr. 120 – 121, Tr. 209), and they ventured no explanation as to why, suddenly, the Union was seemingly unable to represent the employees in the absence of the requested information and documentation.[14]

5.) The June 15 Request for New Haven Response Times

Here as well, the Judge's finding of relevance hinges upon the fact the Union communicated ***"concerns"*** to the Company. See Decision, page 13 (emphasis added). The law plainly required something more. See Disneyland Park, 350 NLRB at 1259 (for information that is not presumptively relevant, "the union must claim that a specific provision of the contract is being breached and must set forth at least some facts to support that claim"). At the very least, the Union should have informed the Company a grievance was under investigation (assuming, of course, that was even true) and specifically referenced the Article(s)

[14] The Judge also failed to address the fact the Union sought substantially the same information from the Company's Waterbury Division and, in spite of receiving substantially the same responses and objections, the Union did not pursue any Unfair Labor Practice Charge against the Waterbury Division. See Tr. 124 – 126

that may have been violated by the Company. Though the Union did later file a grievance (to wit, the 2020 Grievance), the General Counsel has no possible basis to prove the relevance of the requested information to the grievance so long as the record is silent, as it will likely forever remain, on the nature of the alleged events underlying the grievance.

The Judge's analysis also relies upon ***"presumptions,"*** seemingly his own presumptions, in terms of what the Union might have been able to establish with the requested information. See Decision, page 13. (emphasis added). In truth, however, the Judge's presumptions are only a masquerade for Smith's efforts during the hearing to explain why the information may have been of value to the Union. Id., pages 9, 13. Additionally, though emphasized by the Company's post-hearing brief (see page 32), the Judge ignored Smith's key admission that the Union never provided the Company with any explanation of relevance as to the response times:

> *Q:* And you see Mr. Nupp's objection here, do you not, that your request in the company's estimation lacks a basis in relevance. Right?
>
> *A:* I do.
>
> *Q:* And, sir, isn't it true that at no point in time thereafter, not that day and at no point since did the union present the company with an explanation as to why in the union's estimation this information was relevant. That's a fact. Right?
>
> *A:* I can only speak for myself. And I did not.

See Tr. 143 – 144.[15]

The Judge also believed the Union had a right to the requested information because the Union ***"suspected"*** the Company had not scheduled enough represented employees to handle the New Haven call volume and / or the Company had placed Bridgeport crews in New Haven to respond to New Haven calls. See Decision, page 13 (emphasis added). Under the Board's precedent, however, suspicion may not take the place of proof. See G4S Secure Solutions (USA), 369 NLRB No. 7, slip op. at 2 (2020) ("[s]uspicion alone is not enough" to prove relevance). Nor may the Judge conclude the requested information was relevant for reasons that occurred to him but were never communicated to the Company, such as the theory that the response times, together with other requested information that the Judge did not specifically identify, would have allowed the Union to investigate whether Bridgeport crews were only used for purposes of mutual aid. See Decision, pages 13 – 14.

In the end, far from establishing the Union's entitlement to the requested information, the Judge's patchwork of presumptions and suspicions, along with the Judge's *nunc pro tunc* explanations of relevance for the Union, serve only to

[15] The record does not include any evidence of an explanation of relevance that was provided to the Company by some other representative of the Union.

expose a fundamentally flawed and uneven analysis of the General Counsel's allegations.

6.) AMR's Waiver Defense

Based on an affirmative defense set forth by the Amended Answer (see GC Exh. 1[f]), the Company argued that any rights the Union had to the requested information were waived under Article 23.03 of the Agreement, which was activated by virtue of the virus outbreak and expressly empowered the Company to take a broad array of actions unilaterally (*e.g.,* removing employees from the schedule). Though not an argument raised by the General Counsel or the Union, the Judge believed that he should not, and in fact, could not evaluate the merits of the Company's defense because, in doing so, he would effectively decide the merits of the parties' underlying dispute. See Decision, page 14. At the same time, however, the Judge acknowledged that the Board has previously evaluated defenses that a collective bargaining agreement resulted in the waiver of a labor organization's rights to requested information and did not express any concern that the evaluation would stray into a determination of the parties' underlying dispute. Id., citing ADT, LLC, 369 NLRB No. 31 (2020).

Based upon Stericycle, Inc., 370 NLRB No. 89 (2021), which was not a case cited by the General Counsel or the Union, the Judge concluded that, regardless of whether the Union waived any rights to bargain over AMR's actions, the Union

maintained the right to seek information for some purpose unrelated to bargaining, such as the investigation of a grievance. See Decision, page 14. In Stericycle, the union expressly alleged the employer violated the parties' collective bargaining agreement and informed the employer of an intention to pursue related grievances. 370 NLRB No. 89, slip op. at * 11 – 13. In the case here, of course, the facts are markedly different. Between early May and early July 2020, the Union never informed the Company of any possibility that a grievance might be filed by the Union, nor did the Union ever communicate any disagreement to the Company in terms of the rights they invoked under Article 23.03 of the Agreement. In addition, when the Union did file the 2020 Grievance, AMR had good cause to question the relevance of the requested information, since, as explained above, the 2019 Grievance set forth the very same allegation and the Union was able to investigate, file, process and resolve the grievance in the absence of any information.

Lastly, "although not raised by any of the parties," the Judge reviewed *sua sponte* Article 16.08 of the Agreement, which provides "[t]he Employer and the Union shall produce non-privileged and non-confidential information relevant to the particular grievance in response to a written request for such information." See Decision, page 14. However, while raised by AMR's post-hearing brief (see page 43, fn. 10), the Judge did not address the fact the form used for the 2020 Grievance called upon the Union to identify the information the Union believed was

necessary for the grievance and the Union did not identify any such information. See GC Exhs. 16 and 19. Also worthy of note, whereas the Judge expressed a serious discomfort in connection with any adjudication of whether the Union waived any rights under the Agreement, the Judge was obviously willing to adjudicate whether the Union preserved any rights under the Agreement, and worse yet, did so in spite of the fact that neither the General Counsel nor the Union presented him with any related arguments. In the last analysis, Article 16.08 requires the production of information only to the extent the information is "relevant" to a grievance, and the Union made no showing at the time that any of the requested information was relevant to any grievance, nor has the General Counsel made any showing today that any of the requested information was relevant to any grievance.

CONCLUSION

For all the reasons set forth above, the Company respectfully requests that the Board dismiss the Complaint in its entirety.

Dated: April 22, 2021
Glastonbury, CT

Respectfully submitted,

/s/_____

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC.	:	
	:	Case No. 01-CA-263985
versus	:	
INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS LOCAL R1-999, NAGE / SEIU LOCAL 5000	:	

CERTIFICATE OF SERVICE

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on April 22, 2021, the Respondent's Brief in Support of Respondent's Exceptions to Decision Issued by Administrative Law Judge Andrew Gollin was served upon the following *via* email:

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Respectfully submitted,

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